

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**

**Before the Commissioner of Financial and Insurance Services**

**In the matter of**

**XXXXX**

**Petitioner**

**File No. 87171-001**

**v**

**Blue Care Network of Michigan**  
**Respondent**

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**Issued and entered**  
**This 28<sup>th</sup> day of February 2008**  
**by Ken Ross**  
**Commissioner**

**ORDER**

**I**  
**BACKGROUND**

On January 14, 2008, XXXXX (Petitioner), on behalf of their minor son XXXXX, filed a request for external review with the Commissioner of the Office of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On January 22, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The case presented medical issues so the Commissioner assigned the matter to an independent review organization (IRO), which submitted its report on February 1, 2008.

**II**  
**FACTUAL BACKGROUND**

The Petitioner is a member of Blue Care Network of Michigan (BCN) whose health care benefits are contained in the "BCN 1" certificate of coverage (the certificate).

Petitioner has been diagnosed with maxillary hypoplasia, a medical condition in which the upper jaw is underdeveloped or atrophied. He requested authorization for oral surgery consisting of a one piece total maxillary osteotomy with graft (procedure code 21145) along with the services of a second oral surgeon to assist in the procedure. BCN denied the request and the Petitioner appealed.

The Petitioner exhausted BCN's internal grievance process and received its final adverse determination letter dated January 3, 2008.

### **III ISSUE**

Did BCN properly deny the Petitioner authorization for oral surgery?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner's parents say the requested surgery is medically necessary to correct an upper jaw abnormality. This abnormality exists because the upper jaw is too small and as a result causes headaches, facial pain, speech impairment, and difficulty chewing.

Petitioner's providers support his request. His orthodontists, XXXXX and XXXXX, wrote in December 2007 that the treatment:

is indicated to correct a structural problem of the upper and lower jaws, if left unattended it will continue to compromise the integrity of it's components. The traumatic occlusion under which the upper centrals are functioning will eventually result in the loss of these teeth. The loss of the centrals will further impact on the skeletal problem due to the loss of bone in the anterior region of an already deficient upper jaw. Under the present occlusion restoration of the anterior segment with implant replacement of missing teeth will not be possible due to the continuation of occlusal trauma caused [be] the anterior crossbite. This treatment is by no means of a cosmetic nature, but to restore proper function and ensure the health of the stomatognathic system. Leaving the underbite uncorrected will eventually cause more loss of the permanent teeth and no hope for proper function.

XXXXX, Petitioner's oral surgeon, wrote in a letter dated October 26, 2007:

The American Association of Oral and Maxillofacial Surgeons has adopted the following definition of medical necessity to facilitate discussion with third party carriers. "Services provided by an oral and maxillofacial surgeon are determined to be medically necessary when 1) it is appropriate for the symptoms and diagnosis or treatment of the condition; 2) provided for the diagnosis, care and treatment of the patient's condition and 3) in accordance with standards of good oral and maxillofacial surgery practice."

[Petitioner] presents with a condition that will produce abnormal function as well as appearance and distortion of the facial skeleton and are not amendable to orthodontic correction alone. The goals for surgical correction of this condition include the correction or improvement of the dentofacial deformity as well as alleviation of the objective and subjective signs and symptoms as well as the elimination of the psychosocial problems that affects these symptoms. . . . Since there are no non-surgical treatments available for this patient, we are convinced that our surgical proposal is consistent with this diagnosis and condition. We feel that it is essential that the upper jaw be repositioned in order for the patient to achieve a correct occlusion.

Petitioner and his parents believe BCN should provide coverage because the services were medically necessary and essential to relieve his symptoms and allow proper functioning of his mouth.

#### BCN'S Argument

BCN says its denial of coverage is based on this provision in "Part 2: Exclusions and Limitations" in the certificate and medical policies. The relevant certificate provisions are:

#### **2.02 SERVICES WHICH ARE NOT MEDICALLY NECESSARY**

Except as expressly provided in the Certificate, services which are not medically necessary are not covered. The final determination of medical necessity is the judgment of the Plan Physician with concurrence of the Plan Medical Director.

#### **2.13 DENTAL SERVICES**

Dental services, dental prosthesis, x-rays, and oral surgery are not a benefit under this Certificate except as specifically provided in Section 1.19.

In its January 3, 2008 final adverse determination, BCN denied coverage for the services because “[th]e requested services does not meet our medical policy. The records reviewed from [Dr. XXXXX’s office] indicated mild, not severe, medical condition based on cephalometric analysis report.”

BCN says that under its certificate of coverage and its orthognathic surgery medical policy, orthognathic surgery is covered only when specific criteria are met. BCN says its certificate covers some dental-related services but only in very limited situations; generally, when required because of fractures or traumatic injuries or for orthognathic surgery. The certificate covers oral surgery in these situations:

#### **1.19 Oral Surgery**

Oral surgery and X-rays are covered only when authorized by a Plan Physician for the following conditions:

- A. Treatment of fractures of the jaw and facial bones, and dislocation of the jaw.
- B. Oral surgery necessary for prompt repair of trauma to the jaw, natural teeth, cheeks, lips, tongue, roof and floor of the mouth.
- C. Medically necessary cutting procedures for treatment of lesions, tumors and cysts on or in the mouth, as prescribed by a Plan Physician.
- D. Hospital services and related medical services for oral surgical procedures which are medically required to be performed on an inpatient or outpatient hospital basis because of an unrelated medical condition.

However, BCN also cites its medical policy on orthognathic surgery which includes the following statements (pages 3-4):

#### **Medical Policy Statement**

The safety and effectiveness of orthognathic surgery have been established. This is a therapeutic option for the correction of severe functional deformities of the jaw when specific criteria are met.

#### **Rationale**

When conservative therapy is not able to remedy the functional problem associated with a deformity, orthognathic surgery may be required to bring the jaws and dental arches into alignment. This

surgery is considered reconstructive as it is performed to correct a functional defect.

### **Medical Policy Position Summary**

Orthognathic surgery is the surgical correction of skeletal deformities involving the lower jaw and/or the upper jaw. Jaw deformities may cause significant functional difficulties including chewing of food, to keep the lips closed when at rest, abnormal speech, etc. Orthognathic surgery has been established as a safe and effective treatment option for the correction of a significant functional deformity of the jaw when specific criteria are met.

**Inclusionary and Exclusionary Guidelines** (Clinically based guidelines that may support individual consideration and pre-authorization decisions)

Basic Criteria (Must meet all)

- Inability to masticate (chew effectively)
- Reports of cephalometric studies documenting developmental skeletal discrepancies of the maxilla and mandible that can not be corrected by non-surgical procedures. These cephalometric and other radiographic studies should demonstrate severe deviations from the norm sufficient to preclude other than surgical correction.
- Failure of conservative treatment.

Supporting Criteria (Must meet one)

- Severe obstructive sleep apnea
- Maxillofacial deformity and concurrent dysfunction demonstrates:
  - The patient's inability to close lips in repose (lip incompetency)
  - Significantly impacted speech
  - A deformity that is so severe as to clearly demonstrate a severe medical condition in which surgical intervention unequivocally provides positive functional rehabilitation.

### **Commissioner's Review**

The issue in this case is coverage for orthognathic surgery, the surgical correction of abnormalities of the mandible and maxilla. The medical questions presented in this appeal were submitted to an IRO. The IRO reviewer is board certified in oral and maxillofacial surgery and has been in practice for more than 10 years. The IRO reviewer also holds an academic appointment. The IRO reviewer examined the medical records submitted and concluded that the orthognathic surgery is medically necessary for the Petitioner.

The IRO report included the following observations and conclusions:

[N]on surgical therapy was tried for [Petitioner] without success. . . . [Petitioner] has a history of masticatory disfunction and speech difficulties. . . .[A]lthough cephalometric analysis is a component of diagnosis and treatment planning, the definitive treatment plan is based on clinical evaluation, radiographic analysis, dental model evaluation, and patient complaints. . . . [Petitioner] meets the criteria for orthognathic surgery based upon all of the information provided for review.

The Commissioner is not required in all instances to accept the IRO's conclusion. However, the IRO recommendation is afforded deference by the Commissioner. The IRO analysis here is based on extensive experience and professional judgment and the Commissioner can discern no reason why the IRO report should be rejected in this case.

The Commissioner accepts the IRO conclusion and finds that the orthognathic surgery requested by the Petitioner meet's criteria for coverage and is covered under the terms and conditions of his coverage with BCN.

## **V ORDER**

The Commissioner reverses BCN's January 3, 2008, final adverse determination. BCN is required to provide coverage for the requested surgery and related charges to the surgery subject to any applicable terms and conditions of the certificate regarding surgery. BCN shall provide coverage within 60 days from the date of this Order, and within seven days of providing coverage, shall provide the Commissioner proof it has implemented the Commissioner's Order.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner

of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220,  
Lansing, MI 48909-7720.